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Via Electronic Submission

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: *Ex Parte Communications*

Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules, WC Docket No. 07-21; Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-139; Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, WC Docket No. 07-273; Petitions of Qwest Corporation, Embarq Operating Companies, and Frontier and Citizens ILECS For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, WC Docket No. 07-204; Petition to Adopt Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act, as Amended, WC Docket No. 07-267

Dear Ms. Dortch:

Sprint Nextel and CompTel write to express their strong opposition to the Federal Communications Commission ("Commission" or "FCC") granting forbearance from enforcement of certain of its Automated Reporting Management Information System ("ARMIS") safeguards at issue in the above-referenced proceedings. Sprint Nextel and CompTel are especially concerned by reports that the Commission may address multiple requests from incumbent local exchange carriers ("ILECs") for ARMIS relief in a single order by the statutory deadline for deciding AT&T's petition for forbearance from the service quality and network infrastructure ARMIS reports, despite the fact that the other ILECs' petitions address different reports – some of which have not been previously considered for forbearance - and are on different statutory timeframes.¹ For the Commission to take action as sweeping as the petitioning parties request, the Commission will have to address, with particularity and in a

¹ Specifically, AT&T seeks forbearance from filing ARMIS 43-05 (Service Quality Report), 43-06 (Customer Satisfaction Report), 43-07 (Infrastructure Report), and 43-08 (Operating Data Report).

carefully considered manner, the individual merits of each of the pending forbearance petitions, which differ in the range of requested relief.

As an initial matter, the service quality and network infrastructure ARMIS reports at issue in the AT&T forbearance petition continue to serve the public interest in a number of ways. For example, ARMIS 43-05 (Service Quality) assists the Commission, as well as the states, in monitoring ILEC service quality to identify any degradations in service provisioning. ARMIS 43-05 reports how quickly the ILECs repair both interexchange ("IXC") and local circuits and how much service downtime their customers experience. There is still continuing value having this type of information remain publicly available through the ARMIS database because both wholesale and retail customers will be able to determine the level of service they are receiving. And they can compare their experience to the ILEC-wide number to determine if they are getting inferior service. Such data enable Sprint Nextel, for one, to determine whether the ILECs are treating its unbundled network elements ("UNE")-based and IXC businesses the same as they treat their own local and long distance operations. Thus, ARMIS 43-05 acts as a check on discriminatory practices in service provisioning and facilitates the detection of anticompetitive conduct. Because each ILEC has the same incentive to degrade service quality provided to non-affiliated carriers, each of the ILECs should continue to provide this report.

Additionally, the Commission and the states use the data from ARMIS 43-08 to, among other things, determine the extent to which the ILECs wire centers meet the impairment triggers of the *Triennial Review Remand Order* (TRRO)², monitor ILEC investment in facilities, and calculate the total number of local and interexchange calls and switch access minutes.³ Qwest, in fact, implicitly acknowledges the continued usefulness of the data in 43-08 by expressly excluding from its forbearance request the data in 43-08, Table III, columns FC, FD, and FE and noting in particular that they provide business line counts associated with the non-impairment thresholds in the TRRO.⁴ The information in 43-08 is also used in the total factor productivity (TFP) or X factor studies applicable to the Regional Bell Operating Companies ("RBOCs"), while the data in both 43-07 and 43-08 are used for UNE studies.⁵ Thus, given the documented need for the information in these reports for regulatory purposes and the valuable data they provide to regulators, consumers and competitors, granting forbearance to AT&T, let alone Qwest or Verizon, from having to file these reports would be contrary to the public interest.

While the AT&T ARMIS forbearance petition is at least limited to just four ARMIS reports, both Qwest and Verizon seek much more sweeping relief in their forbearance petitions. Qwest seeks relief from all eight ARMIS report, covering accounting, service quality and

² See *Unbundled Access to Network Elements*, WC Docket No. 04-313, *Review of the Section 271 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 01-338, Order on Remand, FCC 04-290, ¶ 105 ("TRRO").

³ See Trends in Telephone Service Industry Analysis and Technology Division Wireline Competition Bureau, February 2007 at 10-4.

⁴ Qwest Petition at 8, fn. 18.

⁵ 43-07 provides data on the number and type of switches and on miles of copper and fiber cable for use in the UNE studies. 43-08 provides data on line counts, minutes of use, mile of cable by type (copper/fiber), miles of conduit, and number of poles for use in UNE and TFP studies.

network infrastructure data, as well as the 492A reporting requirement. Verizon seeks even more expansive forbearance relief, asking to be relieved not only from the obligation to file the eight ARMIS reports but also from complying with the Commission's affiliate transaction rules, the rate-of-return reporting rules and the property recordkeeping requirements.⁶ The Commission must evaluate each of the ILECs' forbearance requests against the three prongs of the statutory forbearance standard before it may grant them forbearance relief. And in these cases, the petitioning ILECs have failed to demonstrate that forbearance from these valuable reporting safeguards satisfies each element of the statutory forbearance criteria enumerated in 47 U.S.C. § 160(a) and their petitions must be denied.

Over the past several weeks, Verizon, Citizens, Windstream and Embarq have filed multiple *ex parte* submissions urging the Commission to take the extraordinary step of extending AT&T's just-granted cost assignment forbearance relief to each of these carriers.⁷ Sprint Nextel and CompTel explained in detail in comments and reply comments filed in the AT&T cost assignment docket why it would be wholly improper for the Commission to grant any extension of similar forbearance relief for Verizon, Qwest, and Embarq in response to their *ex parte* requests.⁸ Specifically, Sprint Nextel and CompTel demonstrated that: (i) these "me-too" requests are flawed in both form and substance; (ii) these carriers are not similarly situated with AT&T or regulated in the same manner so an identical grant of relief is not appropriate without a full examination of the independent merits of each request; and (iii) a grant of these "me-too" entreaties would exacerbate the numerous flaws described in the pending *Petition for Reconsideration of the AT&T Order* and would lead to additional violations of the Administrative Procedures Act (APA).⁹

The Commission must take care when dismantling the primary tool available to detect unreasonable pricing actions and returns as well as discriminatory conduct by carriers with exclusionary market power in their respective geographic areas.¹⁰ State regulators have indicated their concern with the potential loss of cost assignment rules and ARMIS reporting as

⁶ *Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273 (filed November 26, 2007) (*Verizon Petition*). Specifically, the *Verizon Petition* requests forbearance from: (1) the ARMIS reporting rules; (2) the Commission's affiliate transaction and related rules; (3) Part 65, Subpart E and Part 69, Subparts D and E ("rate-of-return reporting rules"); and (4) the Commission's property record and related rules ("property record rules"). In addition, Verizon seeks limited forbearance from 47 U.S.C. § 254(k) to the extent this provision contemplates the accounting methodology for assets and services transferred or provided between an ILEC and any of its non-regulated affiliates embodied in the Commission's affiliate transaction rules. *Verizon Petition* at n. 2 and Attachment 1.

⁷ *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules and Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21 and 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Order*), *pet. for recon pending*.

⁸ Joint Comments of Sprint Nextel Corporation, T-Mobile USA, Inc., CompTel, Time Warner Telecom Inc. and One Communications Corp. on the Issue of Cost Assignment Forbearance for Verizon and Qwest, WC Docket No. 07-21 and 05-342 (filed June 26, 2008).

⁹ *Id.*

¹⁰ The purpose of the cost assignment rules and the ARMIS reports is to help keep ILEC exclusionary market power in check; thus, it doesn't make sense to apply these requirements to those telecommunications service providers who do not hold a dominant share of the market, as some ILECs have advocated in the above-captioned proceedings.

have others in the industry. This information must be available in some public format. Procedures might be streamlined, but the information must continue to be available to support state and federal needs. Simply retaining an outline of historical practices that some claim could be resurrected again if the need were to arise is not sufficient. The truth is, once those who have run a program are gone, it is very difficult and may well be impossible to ever resurrect such a program and it certainly cannot be done in a timely manner or at reasonable expense.

Finally, the Commission has before it a Petition in WC Docket No. 07-267 to adopt requirements governing forbearance proceedings filed under 47 U.S.C. § 10. Lack of solid requirements and procedures has led to the undisciplined cacophony calling for “me too,” and “right now” actions despite the fact that cases have been neither fully examined nor proved and time remains to do a proper analysis. The Commission should focus on establishing procedures in WC Docket No. 07-267 that can guide the industry and regulators in establishing a process that provides not only due process to those involved, but also provides requirements for what must be presented in filings and sufficient material on which to base a reasoned decision. A “me too” claim without supporting material, full examination, participation by all concerned parties, and sufficient time to participate in the process should not constitute an acceptable practice for obtaining forbearance from critical regulatory and statutory safeguards.

For these reasons, the Commission should reject the requests of Verizon, Citizens, Windstream and Embarq to achieve early, unexamined, and unproven forbearance in cost assignment rules and in ARMIS reporting. Sprint Nextel and CompTel encourage the Commission to fully consider the merits of each petition while giving both sides ample opportunity to address all pertinent issues. The Commission should, for future petitions and those with sufficient time remaining in the statutory forbearance period, focus on WC Docket No. 07-267 and develop appropriate requirements that will govern the conduct of forbearance proceedings.

Sincerely,

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